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THE WHITE HOUSE

IN THE
SUPREME COURT OF THE UNITED STATES

No.....

LEE WARD, PETITIONER

VS.

UNITED STATES OF AMERICA, RESPONDENT

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES
CIRCUIT COURT OF APPEALS FOR THE EIGHTH DISTRICT

Comes Lee Ward, petitioner herein, and prays that a writ of certiorari issue to review a judgment of the United States Circuit Court of Appeals for the Eighth Circuit, in the above entitled cause, affirming a decision of the United States District Court for the Eastern District of Arkansas.

I

OPINIONS BELOW

(a) The opinion of the District Court (R. 9-16) is reported in 65 F. Supp. 9.

(b) The opinion of the Circuit Court of Appeals is reported in 158 F. 2nd 499. (R-23)

II

JURISDICTION

(a) The judgment of the Eighth Circuit Court of Appeals was entered on December 12 1946. Petition for rehearing was denied on January 7, 1947. Time in which to file this petition was extended by the Court to May 8, 1947.

(b) Jurisdiction of this court is invoked under Section 240 (a) of the Judicial Code as amended by the Act of February 13, 1925 (Chap. 229, 43 Stat. 936). Initial jurisdiction of the District Court was invoked under the Tucker Act (28 U.S.C.A. 41 [20]).

III

QUESTION PRESENTED

Can there be a recovery of reasonable compensation under Title 34, U.S.C.A., Section 520, by a licensed attorney, who, while on active duty as a chief yeoman in the U. S. Naval Reserve in time of war, was officially assigned for a period of fourteen months to full time duty as an attorney in the procurement of land title evidence for the use and benefit of the U. S. Navy Department?

IV

STATUTES INVOLVED

(a) That portion of Title 34, U.S.C.A., Section 520, which reads as follows:

"The head or other authorized officer of any department, independent establishment, or agency, shall procure any evidence of title which the

Attorney General may deem necessary, and the expenses of procurement, except where otherwise authorized by law or provided by contract, may be paid out of the appropriations for the acquisition of land or out of the appropriations made for the contingencies of the acquiring department, independent establishment, or agency."

(b) That portion of Title 34, U.S.C.A., Section 853b, which reads as follows:

"And Provided Further, That no existing law shall be construed to prevent any member of the Naval Reserve from accepting employment in any civil branch of the public service nor from receiving the pay and allowances incident to such employment in addition to any pay and allowances to which he may be entitled under the provisions of sections 853-853j, 854-854f, 855-855c, 855d-855s, 856 of this title nor as prohibiting him from practicing his civilian profession or occupation before or in connection with any department of the Federal Government."

(c) Title 5, U.S.C.A., Section 69, which reads as follows:

"No allowance or compensation shall be made to any officer or clerk, by reason of the discharge of duties which belong to any other officer or clerk in the same or any other department; and no allowance or compensation shall be made for any extra services whatever, which any officer or clerk may be required to perform, unless expressly authorized by law."

(d) Title 5, U.S.C.A., Section 70, which reads as follows:

"No officer in any branch of the public service, or any other person whose salary, pay or emolu-

ments are fixed by law or regulations, shall receive any additional pay, extra allowance, or compensation, in any form whatever, for the disbursement of public money, or for any other service or duty whatever, unless the same is authorized by law, and the appropriation therefor explicitly states that it is for such additional pay, extra allowance, or compensation."

V

STATEMENT OF CASE

Petitioner has been a licensed, practicing attorney at law since February, 1938 (R. 1). On August 8, 1942, he voluntarily enlisted in the U. S. Naval Reserve and was called to active duty on September 13, 1942 (R. 1-2). About June 1, 1944, while on active duty as a chief yeoman with a Naval Construction (Seabees) unit, petitioner was officially reassigned to full time duty with the Navy Real Estate Division, Honolulu, Hawaii, as a land title attorney for the procurement of land title evidence (R. 2). This assignment, during which petitioner neither performed nor was expected to perform any yeoman duties, continued through fourteen months (R. 2). In payment for his services as a professional land title attorney, petitioner received from the Navy only the regular pay and allowances for his enlisted rate of chief yeoman (R. 4-5).

When petitioner was assigned to full time legal duties, and prior thereto, there was no discussion as to what compensation he would receive for his legal services (R. 5). Petitioner, in reliance upon the law and public policy, entered upon his newly assigned duties without question;

and in the face of repeated refusals by the Navy Department to adjust his compensation to the duties imposed upon him petitioner continued his professional services to the Navy until the conclusion of the war (R. 6).

On October 31, 1945, after petitioner's discharge from the U. S. Naval Reserve, this action was brought in the United States District Court for the Eastern District of Arkansas, under provisions of the Tucker Act (28 U.S.C.A. 41 [20]) to recover reasonable compensation for his legal services to the Navy Department, less such pay and allowances as he actually received under the rate of chief yeoman. The District Court held that, while petitioner had adequately alleged a contract with the United States of America for his services as an attorney, this claim is barred by Title 5, U.S.C.A., Section 70 (R. 11-15). Petitioner's claim was dismissed for failure to state facts upon which relief may be granted (R. 16).

Upon appeal to the Circuit Court of Appeals for the Eighth Circuit, it was held that the judgment of the District Court dismissing petitioner's claim should be affirmed not only because petitioner's claim is barred by Title 5, U.S.C.A., Section 70 *and* Section 69 but also because petitioner had alleged nothing in his complaint which constituted a promise by the United States of America to pay him for his legal services (158 F. 2d 499. (R. 23-28)

VI

SPECIFICATION OF ERROR

The Circuit Court of Appeals for the Eighth Circuit erred in affirming the judgment of the District Court dismissing petitioners complaint because it does not state facts upon which relief may be granted.

VII

REASONS FOR GRANTING THE WRIT

(a) *The holding of the Circuit Court of Appeals is in direct conflict with two applicable Acts of Congress.*

The Navy Department was authorized by Congress to employ and pay someone to do exactly what petitioner now seeks compensation for (34 U.S.C.A. 520). This Act is frank recognition by Congress that professional skills required in the procurement of land title evidence are wholly beyond and unrelated to the duties of any enlisted servicemen and constitutes a specific promise by the United States of America that whoever might be employed to do the work would be paid reasonable compensation.

When a member of the U. S. Naval Reserve is deflected from the official duties of his rate or rank and reassigned to the performance of his civilian profession on behalf of, or in connection with the Navy Department, he is entitled to reasonable compensation for such professional services (34 U.S.C.A. 853b).

Both Acts of Congress cited above were in full force and effect in June, 1944, when petitioner was employed by

the Navy Department to practice his legal profession. More explicit promises to petitioner that he would be paid for his legal services by the United States of America could hardly be expressed in the English language.

(b) *The holding of the Circuit Court of Appeals is in direct conflict with applicable decisions of this court.*

An employee of the United States Government is entitled to additional pay for performance of duties clearly outside and unrelated to his regular official duties, notwithstanding 5 U.S.C.A. 69, 70; and the official duties of one member of a class may not be expanded and enlarged without so expanding and enlarging the duties of every member of the class. *Converse v. United States*, 21 How. (62 U.S.) 463. And this is so even though the claimant is a member of the armed forces. *United States v. Ripley*, 32 U.S. 18. Failure by Congress to name a specific rate of pay for employment contemplated by 34 U.S.C.A. 520 means that claimant shall receive reasonable compensation. *United States v. Brindle*, 110 U. S. 688. Members of the U. S. Naval Reserve are particularly exempt from the effects of 5 U.S.C.A. 69, 70 (34 U.S.C.A. 853b).

(c) *The holding of the Circuit Court of Appeals established a new, strange, and untenable public policy.*

In delivering the opinion of the court below, Circuit Judge Sanborn said of your petitioner:

"He enlisted in the Navy in time of War. His rating fixed his status and his pay. He was directed by his superior officers to perform the duties

of a title attorney. He was not separated from his rating as a yeoman. He was a yeoman doing the work of a title attorney because he was ordered to do so. Assuming that the Navy Regulations do not authorize ordering a yeoman to perform the duties of a title attorney, the fact remains that Ward did furnish these services in compliance with the orders of his superior officers and not in reliance upon any contract, express or implied. While Ward insists that the legal services which he rendered had no relation to the duties of a yeoman, it is our opinion that under the facts these services are to be regarded as having been added, by superior authority, to his regular duties."

—158 F. 2nd 499. (R-27)

Your petitioner is unable to find in all the history of American Judiciature a similar attempt to question whether a citizen knew of and relied upon the protection of existing law. Heretofore, it has always been conclusively presumed that American citizens know the law and proceed in reliance upon it at all times. The philosophy of personal rights expressed in the foregoing quotation is a stranger in our judicial system. Its acceptance as official public policy is untenable.

If this new and strange doctrine were deleted from the opinion of the court below, then its conclusion that the United States made no promise to pay petitioner for his legal services would be without any foundation whatever.

CONCLUSION

The judgment of the court below is in conflict with two Acts of Congress and with the applicable decisions of this court. It establishes a strange and untenable public policy. It is clearly wrong. For these reasons a writ of certiorari should be granted.

Respectfully submitted,

LEE WARD,
Attorney pro se
Benton, Arkansas